

Assembly Bill No. 123

CHAPTER 82

An act to amend Sections 1505, 1568.03, and 1569.145 of the Health and Safety Code, relating to community care facilities.

[Approved by Governor August 5, 2009. Filed with
Secretary of State August 6, 2009.]

LEGISLATIVE COUNSEL'S DIGEST

AB 123, Portantino. Housing for elderly or disabled persons.

Existing law establishes the State Department of Social Services and sets forth its powers and duties, including, but not limited to, administration over the California Community Care Facilities Act, which, with certain exceptions, requires community care facilities, as defined, to meet prescribed licensing standards.

Existing law exempts housing for elderly or disabled persons that are approved and operated pursuant to prescribed provisions of federal law from licensing requirements applicable to community care facilities, residential care facilities for persons with life-threatening illness, and residential care facilities for the elderly.

This bill would, instead, exempt housing occupied by elderly or disabled persons under a regulatory agreement pursuant to these provisions of federal law, and would also exempt housing that qualifies for a low-income housing credit under provisions of the federal Tax Reform Act of 1986 or is subject to the requirements for dwellings for low-income families pursuant to the federal Housing and Community Development Act of 1974, and that is occupied by elderly or disabled persons, or both.

The people of the State of California do enact as follows:

SECTION 1. Section 1505 of the Health and Safety Code is amended to read:

1505. This chapter does not apply to any of the following:

- (a) Any health facility, as defined by Section 1250.
- (b) Any clinic, as defined by Section 1202.
- (c) Any juvenile placement facility approved by the Department of Corrections and Rehabilitation, Division of Juvenile Justice, or any juvenile hall operated by a county.
- (d) Any place in which a juvenile is judicially placed pursuant to subdivision (a) of Section 727 of the Welfare and Institutions Code.
- (e) Any child day care facility, as defined in Section 1596.750.

(f) Any facility conducted by and for the adherents of any well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of the church or denomination.

(g) Any school dormitory or similar facility determined by the department.

(h) Any house, institution, hotel, homeless shelter, or other similar place that supplies board and room only, or room only, or board only, provided that no resident thereof requires any element of care as determined by the director.

(i) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(j) Any alcoholism or drug abuse recovery or treatment facility as defined by Section 11834.11.

(k) Any arrangement for the receiving and care of persons by a relative or any arrangement for the receiving and care of persons from only one family by a close friend of the parent, guardian, or conservator, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department. For purposes of this chapter, arrangements for the receiving and care of persons by a relative shall include relatives of the child for the purpose of keeping sibling groups together.

(l) (1) Any home of a relative caregiver of children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(2) Any home of a nonrelative extended family member, as described in Section 362.7 of the Welfare and Institutions Code, providing care to children who are placed by a juvenile court, supervised by the county welfare or probation department, and the placement of whom is approved according to subdivision (d) of Section 309 of the Welfare and Institutions Code.

(m) Any supported living arrangement for individuals with developmental disabilities, as defined in Section 4689 of the Welfare and Institutions Code.

(n) (1) Any family home agency, family home, or family teaching home as defined in Section 4689.1 of the Welfare and Institutions Code, that is vendored by the State Department of Developmental Services and that does any of the following:

(A) As a family home approved by a family home agency, provides 24-hour care for one or two adults with developmental disabilities in the residence of the family home provider or providers and the family home provider or providers' family, and the provider is not licensed by the State Department of Social Services or the State Department of Public Health or certified by a licensee of the State Department of Social Services or the State Department of Public Health.

(B) As a family teaching home approved by a family home agency, provides 24-hour care for a maximum of three adults with developmental disabilities in independent residences, whether contiguous or attached, and

the provider is not licensed by the State Department of Social Services or the State Department of Public Health or certified by a licensee of the State Department of Social Services or the State Department of Public Health.

(C) As a family home agency, engages in recruiting, approving, and providing support to family homes.

(2) No part of this subdivision shall be construed as establishing by implication either a family home agency or family home licensing category.

(o) Any facility in which only Indian children who are eligible under the federal Indian Child Welfare Act (Chapter 21 (commencing with Section 1901) of Title 25 of the United States Code) are placed and that is one of the following:

(1) An extended family member of the Indian child, as defined in Section 1903 of Title 25 of the United States Code.

(2) A foster home that is licensed, approved, or specified by the Indian child's tribe pursuant to Section 1915 of Title 25 of the United States Code.

(p) (1) (A) Any housing occupied by elderly or disabled persons, or both, that is initially approved and operated under a regulatory agreement pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C. Sec. 1715f), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services.

(B) Any housing that qualifies for a low-income housing credit pursuant to Section 252 of Public Law 99-514 (26 U.S.C. Sec. 42) or that is subject to the requirements for rental dwellings for low-income families pursuant to Section 8 of Public Law 93-383 (42 U.S.C. Sec. 1437f), and that is occupied by elderly or disabled persons, or both, where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services.

(2) The project owner or operator to which paragraph (1) applies may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(q) Any similar facility determined by the director.

SEC. 2. Section 1568.03 of the Health and Safety Code is amended to read:

1568.03. (a) No person, firm, partnership, association, or corporation within the state and no state or local public agency shall operate, establish, manage, conduct, or maintain a residential care facility in this state without first obtaining and maintaining a valid license therefor, as provided in this chapter.

(b) A facility may accept or retain residents requiring varying levels of care. However, a facility shall not accept or retain residents who require a higher level of care than the facility is authorized to provide. Persons who require 24-hour skilled nursing intervention shall not be appropriate for a residential care facility.

(c) This chapter shall not apply to the following:

(1) Any health facility, as defined in Section 1250.

(2) Any clinic, as defined in Section 1200.

(3) Any arrangement for the receiving and care of persons with chronic, life-threatening illness by a relative, guardian or conservator, significant other, or close friend; or any arrangement for the receiving and care of persons with chronic, life-threatening illness from only one family as respite for the relative, guardian or conservator, significant other, or close friend, if the arrangement is not for financial profit and occurs only occasionally and irregularly, as defined by regulations of the department.

(4) (A) Any house, institution, hotel, foster home, shared housing project, or other similar facility that is limited to providing any of the following: housing, meals, transportation, housekeeping, recreational and social activities, the enforcement of house rules, counseling on activities of daily living, and service referrals, as long as both of the following conditions are met:

(i) After any referral, all residents thereof independently obtain care and supervision and medical services without the assistance of the facility or of any person or entity with an organizational or financial connection with that facility.

(ii) No resident thereof has an unmet need for care and supervision or protective supervision. A memorandum of understanding between the facility and any service agency to which it refers residents does not necessarily itself constitute an agreement for care and supervision of the resident.

(B) In determining the applicability of this paragraph, the department shall determine the residents' need for care and supervision, if any, and shall identify the persons or entities providing or assisting in the provision of care and supervision. This paragraph shall apply only if the department determines that the care and supervision needs of all residents are being independently met.

(5) (A) (i) Any housing occupied by elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d (3) of Public Law 87-70 (12 U.S.C. Sec. 1751f), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services.

(ii) Any housing that qualifies for a low-income housing credit pursuant to Section 252 of Public Law 99-514 (26 U.S.C. Sec. 42) or that is subject to the requirements for rental dwellings for low-income families pursuant to Section 8 of Public Law 93-383 (42 U.S.C. Sec. 1437f), and that is occupied by elderly or disabled persons, or both, where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services.

(B) The project owner or operator to which subparagraph (A) applies may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(7) Any similar facility determined by the director.

(d) A holder of a residential care facility license may hold or obtain an additional license or a child day care facility license, as long as the services required by each license are provided at separate locations or distinctly separate sections of the building.

(e) The director may bring an action to enjoin the violation or threatened violation of this section in the superior court in and for the county in which the violation occurred or is about to occur. Any proceeding under this section shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the director shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. The court shall, if it finds the allegations to be true, issue its order enjoining continuance of the violation.

SEC. 3. Section 1569.145 of the Health and Safety Code is amended to read:

1569.145. This chapter shall not apply to any of the following:

(a) A health facility, as defined by Section 1250.

(b) A clinic, as defined by Section 1200.

(c) A facility conducted by and for the adherents of a well-recognized church or religious denomination for the purpose of providing facilities for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of the religion of that church or denomination.

(d) A house, institution, hotel, congregate housing project for the elderly, or other similar place that is limited to providing one or more of the following: housing, meals, transportation, housekeeping, or recreational and social activities; or that have residents independently accessing supportive services, provided, however, that no resident thereof requires an element of care and supervision or protective supervision as determined by the director. This subdivision shall not include a home or residence that is described in subdivision (f).

(e) Recovery houses or other similar facilities providing group living arrangements for persons recovering from alcoholism or drug addiction where the facility provides no care or supervision.

(f) (1) An arrangement for the care and supervision of a person or persons by a family member.

(2) An arrangement for the care and supervision of a person or persons from only one family by a close friend, whose friendship preexisted the contact between the provider and the recipient, and both of the following are met:

(A) The care and supervision is provided in a home or residence chosen by the recipient.

(B) The arrangement is not of a business nature and occurs only as long as the needs of the recipient for care and supervision are adequately met.

(g) (1) (A) Any housing occupied by elderly or disabled persons, or both, that is approved and operated pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), or whose mortgage is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or that receives mortgage assistance pursuant to Section 221d(3) of Public Law 87-70 (12 U.S.C. Sec. 1715l), where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services.

(B) Any housing that qualifies for a low-income housing credit pursuant to Section 252 of Public Law 99-514 (26 U.S.C. Sec. 42) or that is subject to the requirements for rental dwellings for low-income families pursuant to Section 8 of Public Law 93-383 (42 U.S.C. Sec. 1437f), and that is occupied by elderly or disabled persons, or both, where supportive services are made available to residents at their option, as long as the project owner or operator does not contract for or provide the supportive services.

(2) The project owner or operator to which paragraph (1) applies may coordinate, or help residents gain access to, the supportive services, either directly, or through a service coordinator.

(h) A similar facility determined by the director.

(i) For purposes of this section, “family member” means a spouse, by marriage or otherwise, child or stepchild, by natural birth or by adoption, parent, brother, sister, half brother, half sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or a person denoted by the prefix “grand” or “great,” or the spouse of one of these persons.

(j) A person shall not be exempted from this chapter’s licensure requirements if he or she has been appointed as conservator of the person, estate of the person, or both, if the person is receiving care and supervision from the conservator as regulated by this chapter, unless the conservator is otherwise exempted under other provisions of this section.